

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CYRUS MILLER	:	
on behalf of himself and all others	:	
similarly situated,	:	
	:	Civil Action No._____
Plaintiff,	:	
	:	
vs.	:	CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL
NESTLÉ PURINA PETCARE	:	
COMPANY,	:	
Defendant.	:	
	:	

Plaintiff, by his attorneys, on behalf of himself and all others similarly situated, alleges the following pursuant to the investigation of his counsel and based on information and belief, except as to allegations pertaining to personal knowledge as to himself.

NATURE OF THE ACTION

1. This is a class action against Nestlé Purina PetCare Company concerning Purina's Beneful ® line of wet and dry dog food products (the "Products"). The Products have caused and continue to cause illness and/or death in a significant number of dogs who consume the Products.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the claims asserted herein individually and on behalf of the Class pursuant to 28 U.S.C. §1332, as amended in 2005 by the Class Action Fairness Act. Subject matter jurisdiction is proper because: (1) the amount in controversy in this class action exceeds five million dollars, exclusive of interest and costs; and (2) a substantial number of the members of the proposed class are citizens of a state different from that of

Defendant. Personal jurisdiction is proper as Defendant is domiciled in Missouri and has purposefully availed itself of the privilege of conducting business activities within the State of Missouri.

3. Venue is proper pursuant to 28 U.S.C. §1391(a) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

4. Plaintiff Cyrus Miller (“Plaintiff” or “Miller”) is an individual consumer and is a citizen of Virginia residing in the County of Loudoun.

5. Defendant Nestlé Purina PetCare Company (“Defendant” or “Purina”) is a corporation organized and existing under the laws of the State of Missouri, with its headquarters and principal place of business at Checkerboard Square, St. Louis, Missouri 63164.

SUBSTANTIVE ALLEGATIONS

6. Defendant manufactures, markets and sells Purina Beneful ® brand wet and dry dog foods in supermarkets, drug stores, pet supply stores and discount stores nationwide. Purina manufactures thirteen lines of dog food.

7. Purina Beneful ® is a line of dog food manufactured by Defendant that includes wet and dry dog food products as well as dog treats. Purina Beneful ® includes the following wet and dry dog food products (the “Products”):

a. Purina Beneful ® dry dog food varieties:

i. Healthy Fiesta, Healthy Growth for Puppies, Healthy Radiance ®, Healthy Weight ®, Incredibites ®, Original ®, Playful Life ®.

b. Purina Beneful ® wet dog food varieties:

i. Medleys: Romana Style Medley, Tuscan Style Medley

- ii. Prepared Meals: Beef & Chicken Medley, Beef Stew, Chicken Stew, Hearty Roasters Savory Beef Recipe, Hearty Roasters Savory Pork Recipe, Hearty Roasters Savory Turkey Recipe, Roasted Chicken Recipe, Roasted Turkey Medley, Savory Rice & Lamb Stew, Simmered Beef Entrée, Summered Chicken Medley.



8. Upon information and belief, Defendant's research, product development, marketing, retail promotion and advertising decisions for Beneful ® brand products were conceived and approved of, and emanated from its headquarters in St. Louis, Missouri.

9. Defendant markets the Beneful ® line of products as healthy products that will keep dogs feeling playful. On www.beneful.com, Defendant touts,

your dog
loves to play..

So we make Beneful® brand dog food
to feed the need to play as well as great tasting snacks.

10. Individual product descriptions on www.beneful.com represent the Products as "healthy," "nutritious," and "wholesome."¹

¹ See, e.g. <http://www.beneful.com/Products/Dry-Dog-Food/Healthy-Weight/>;
<http://www.beneful.com/Products/Wet-Dog-Food/Beef-Chicken-Medley/>

11. The Products' principal display panels state that the Products are "dog food" and "100% Complete and Balanced Nutrition" or "100% Complete Nutrition."



12. Plaintiff purchased Purina Beneful ® Healthy Weight ® dog food in September 2011 for his then-six year old silver standard poodle, Sophie.



Sophie

Prior to this purchase, Plaintiff fed Sophie a different brand of dog food. Plaintiff began feeding Sophie Beneful ® Healthy Weight dog food immediately after he purchased the food.

13. Two weeks after starting Sophie on a diet of Beneful ® Healthy Weight dog food and making no other changes to her diet or routine, Sophie began to develop a number of symptoms that progressed in severity as she continued her diet of Beneful ® Healthy Weight dog food. Sophie became lethargic, incontinent, and developed blood in her urine.

14. On October 24, November 2, and November 11, 2011, Sophie went to veterinarian visits for her ailments. Sophie was diagnosed with severe bladder stones and the veterinarian suggested Miller switch Sophie's food to a medicated dog food for urinary health. Plaintiff incurred over \$1,000 in veterinary expenses for these visits.

15. Prior to being fed Beneful ® dog food, Sophie had not experienced any health problems and had no prior history of urinary ailments or incontinence.

16. On November 11, 2011 Miller switched Sophie's food to a non-Purina brand medicated dry food and Sophie's bladder stones and incontinence subsided within four to six weeks.

17. Sophie was not the first, nor the last dog to experience a similar illness immediately after starting a Purina Beneful ® diet. Indeed, a review of the website <http://www.consumeraffairs.com/pets/beneful.html> on February 12, 2013 shows approximately 300 complaints concerning Beneful ® wet and dry dog food products causing similar illnesses and or/death in dogs. Moreover, Beneful's Facebook page, www.facebook.com/beneful, contains similar reports arising from canine consumption of the Products.

18. On both websites, consumers shared similar accounts of their dogs experiencing symptoms such as kidney failure, liver failure, lethargy, blood in urine, rapid weight loss, incontinence, cysts, bladder stones and/or kidney stones, among other ailments, after being fed a diet of Beneful ® dog food.

19. For example, consumers expressed the following complaints on <http://www.consumeraffairs.com/pets/beneful.html>:

Daniel of Philadelphia, Pennsylvania, February 11, 2013

My dog started getting sick the day we bought Beneful Healthy Fiesta. He's **foaming at the mouth, whining and vomiting**. We have a vet appointment today. Please recall. It is awful to see him suffer.

Gary of Elyria, Ohio, February 5, 2013

I woke up one morning to find my Cocker so sick and throwing up everywhere. The only dog food he ever ate was Beneful. I took him to vet and ran a lot of test just to find out **his liver was shutting down**. I spent over \$1,000 trying to keep him alive, but everything we tried didn't work. I had to watch him die in so much pain that I cried for days. My vet keeps asking if he drank antifreeze. I knew that never happened. [...]

Sarah of Warner Robins, Georgia, January 31, 2013

I was feeding Wellness dog food to my 2-3 year old doxies. I lost my job and switched them to Beneful. **Two days later, they were both at the vet with kidney failure. Both did not make it**. Purina killed my dogs. Why is this company allowed to sell this dog food when it kills our pets? [...]

Tami of Gilde, Oregon, September 15, 2012

We had our Lab on Beneful and he stopped eating, had **diarrhea and vomiting and started losing weight**. This was within just a couple of days after we had opened a new bag of Beneful and we took him to our vet on a Friday. And he started bleeding from the nose and mouth on Monday and we **had to put him to sleep on July 29th, 2012**. That day, the vet stated he would not make it through the day. This makes me so upset. This was a dog we had gotten for our grandson's 2nd birthday and he is now only 5. That was his best friend he no longer has.

[Emphasis added].

20. In recent months, consumer complaints have snowballed, as more and more consumers are “putting two and two together” as news of the issues related to Purina Beneful ® dog food is disseminated. The complaints concern both Beneful ® wet and dry dog food products.

21. On Purina’s Beneful ® Facebook page, www.facebook.com/beneful, Purina responds to complaints and reports of serious death or illness with pro forma responses such as, “Hi [Name] Our products are safe to feed & are enjoyed by millions of dogs each day. To learn more about our nutrition philosophy, please visit us here: <http://puri.na/ShlNAz>. To learn more about our quality efforts, please visit us at www.nestlepurina.com/qualityassurance.aspx,” and “We appreciate you coming to us with concerns, [Name]. The safety and quality of our products are our top priorities. We stand behind the high quality of the Purina pet food products, which consumers can feed to their pets with total confidence. Thanks.”

22. Upon information and belief, the Products have caused similar illnesses and/or death in a significant number of dogs from at least January 2011 to the Present, and possibly as early as February 2008.

23. To date, despite the overwhelming number and severity of similar consumer complaints concerning the Products, Purina has not recalled the Products.

24. News sources have responded to similar consumer complaints and have initiated coverage of the issue. On January 16, 2013 msn.com published an article titled, “Nestlé Purina’s Beneful accused of poisoning dogs.”²

As of Tuesday, there were more than 220 comments about Beneful listed on the Consumer Affairs site, the majority of them complaints from alarmed pet owners.

² <http://news.msn.com/us/nestl%C3%A9-purinas-beneful-accused-of-poisoning-dogs>

.....

Complaints by pet owners on ConsumerAffairs.com claim that their dogs fell sick over the past three months after consuming Beneful products that include Healthy Radiance, Healthy Weight and Playful Life. Symptoms ranged from vomiting to diarrhea to kidney failure. The Examiner.com article says that vets reported "bacterial infections, liver and kidney failure and high toxins in pets" brought for check-ups related to Beneful-related illnesses.

The problem is not limited to a single city or state, but is reported to be taking place across the country.

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action individually, and as a class action, for violations of the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 *et seq.*, pursuant Federal Rules of Civil Procedure Rule 23 on behalf of himself and the class (the "Class") defined as follows:

All persons who purchased the Products in the United States. Specifically excluded from this Class are Defendant; the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of Defendant.

26. Upon information and belief, the Class is sufficiently numerous, as it includes thousands of persons who have purchased the Products.

27. There are questions of law and/or fact common to the Class and these questions predominate over questions affecting only individual class members. Common legal and factual questions include, but are not limited to:

- a. Whether Defendant is a "person" within the meaning of Mo. Rev. Stat § 407.010;
- b. whether Defendant has engaged in unlawful practices within the meaning of Mo. Rev. Stat. § 407.020;

- c. whether Defendant's misrepresentations that the Products are "healthy," "wholesome," "dog food," "100% Complete Nutrition" and/or "100% Complete and Balanced Nutrition" are false and/or misleading because the Products cause illness and/or death in a significant number of dogs; and
- d. whether Defendant's acts, omissions and representations directly, foreseeably and proximately caused Plaintiff and the Class to suffer an ascertainable loss when they paid for Products that cause illness and/or death in a significant number of dogs.

28. Plaintiff will fairly and adequately represent the Class and has retained counsel experienced and competent in the prosecution of consumer and class action litigation. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and anticipates no difficulty in the management of this litigation as a class action.

29. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct.

30. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Because of the amount of individual class members' claims relative to the complexity of the litigation and the financial resources of the Defendant, few, if any, members of the Class would seek legal redress individually for the wrongs complained of herein.

FIRST CAUSE OF ACTION
(Violation of Missouri Merchandising Practices Act Mo. Rev. Stat. §§ 407.010 *et seq.*)

31. The foregoing allegations are realleged and incorporated by reference as if fully set forth herein.

32. Defendant is a “person” within the meaning of Mo. Rev. Stat. § 407.010.

33. Defendant has engaged in unlawful practices within the meaning of Mo. Rev. Stat. § 407.020 by selling Products that cause illness and/or death in a significant number of dogs.

34. Defendant’s representations that the Products are “healthy,” “wholesome,” “dog food,” “100% Complete Nutrition” and/or “100% Complete and Balanced Nutrition” are false and/or misleading to a reasonable consumer because, *inter alia*, Defendant failed to disclose that the Products caused, and/or had a significant risk of causing, illness and/or death in a significant number of dogs.

35. Plaintiff and the Class suffered an ascertainable loss of money or property as a result of the Defendant’s unlawful practices alleged above, because, *inter alia*, the Products cause illness and/or death to a significant number of dogs, and, as a result, the value of the Products they purchased were worth less than the value of the Products as represented by Defendant.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for judgment against Defendant as follows:

(a) For an Order certifying the Class under Rule 23, and appointing Plaintiff as Class Representative and his attorneys as Class Counsel;

(b) for an order declaring that Defendant's conduct violates Mo. Rev. Stat. § 407.010

et seq.:

- (c) for punitive damages, reasonable attorneys' fees, filing fees, and the reasonable costs of suit pursuant to Mo. Rev. Stat. §§ 407.010, *et seq.*;
- (d) for injunctive relief as pleaded or as the Court may deem proper;
- (e) for pre- and post-judgment interest; and
- (f) for such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: February 15, 2013

Respectfully submitted,

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